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Public Bill Committee

PRISONS AND COURTS BILL

Fourth Sitting

Wednesday 29 March 2017

(Afternoon)

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Sunday 2 April 2017

The Committee consisted of the following Members:

Chairs: Mr Graham Brady, † Graham Stringer

† Arkless, Richard *(Dumfries and Galloway)* (SNP)
† Burgon, Richard *(Leeds East)* (Lab)
Fernandes, Suella *(Fareham)* (Con)
† Gyimah, Mr Sam *(Parliamentary Under-Secretary of State for Justice)*
Heald, Sir Oliver *(Minister for Courts and Justice)*
† Jenrick, Robert *(Newark)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
McGinn, Conor *(St Helens North)* (Lab)
† Opperman, Guy *(Lord Commissioner of Her Majesty's Treasury)*
† Philp, Chris *(Croydon South)* (Con)
† Qureshi, Yasmin *(Bolton South East)* (Lab)
† Saville Roberts, Liz *(Dwyfor Meirionnydd)* (PC)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Swayne, Sir Desmond *(New Forest West)* (Con)
Thomas-Symonds, Nick *(Torfaen)* (Lab)
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
† Tracey, Craig *(North Warwickshire)* (Con)
† Warman, Matt *(Boston and Skegness)* (Con)

Katy Stout, Clementine Brown, *Committee Clerks*

† attended the Committee

Public Bill Committee

Wednesday 29 March 2017

(Afternoon)

[Graham stringer *in the Chair*]

Prisons and Courts Bill

2 pm

Clause 2

Her Majesty's Chief Inspector and Inspectorate of Prisons

Amendment proposed (this day): 18, in clause 2, page 4, line 19, at end insert—

"(3A) In preparing a section 5A(2) report, the Chief Inspector must also consider the effectiveness of practices and procedures in the prison in relation to the protection of the rights of prisoners."—*(Yasmin Qureshi.)*

This amendment requires the Chief Inspector to report on the rights of prisoners.

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 19, in clause 2, page 4, line 22, leave out "90 days" and insert "60 days".

Amendment 20, in clause 2, page 4, line 23, at end insert—

"(5A) The response must set out the actions that the Secretary of State has taken, or proposes to take, in response to the concerns described in the report."

Amendment 21, in clause 2, page 5, line 2, leave out "28 days" and insert "14 days".

The Parliamentary Under-Secretary of State for Justice (Mr Sam Gyimah): Welcome to the Chair, Mr Stringer. I explained earlier that we are making changes to what Her Majesty's inspectorate of prisons is required to report on. The chief inspector will continue to set his own inspection criteria, but in addition the inspectorate, when preparing inspection reports, must have regard to the statutory purpose of prison, which is set out in the Bill. It must also report on leadership.

Amendment 18 would require the chief inspector to report on procedures relating to prisoners' rights. We have discussed how the Bill gives statutory recognition of the inspectorate's role in relation to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment. OPCAT is about preventing ill treatment of prisoners and HMIP draws on OPCAT in setting out its inspection criteria.

Furthermore, section 5A of the Prison Act 1952 already requires the chief inspector to report on the treatment of prisoners and conditions in prisons. The current inspection framework focuses heavily on prisoner rights. One of the four HMIP "healthy prison tests" is "Respect", which assesses how far prisoners are treated with respect for their human dignity. Prisoners' rights are therefore already central to the work of the chief inspector.

Amendments 19, 20 and 21 relate to responses provided by the Secretary of State to inspection reports. We want to increase the impact of the inspectorate and we want inspection reports to lead to improvements. Amendment 19 seeks to shorten the time taken by the Secretary of State to respond to an inspection report, from 90 days to 60 days. Although I am sympathetic to the intention behind the amendment, which is to ensure a timely response to inspection reports, I would not want that to compromise action needed to implement recommendations.

Some inspection reports have around 80 recommendations, which involve contributions from prisons, policy leads and other providers, such as NHS England. It can take time to evaluate inspection reports and then to put in place meaningful responses to them, particularly if recommendations relate to services that are not directly provided by the Prison Service, such as health.

Of course, that does not mean that action is not taken before 90 days. Where a report highlights matters of concern, those matters will start to be addressed immediately. The 90-day limit to respond to inspection reports is informed by current practice. It enables thorough responses to be given to what are serious and detailed reports.

Amendment 20 seeks to shorten the time for the Secretary of State to respond to an urgent notification from 28 days to 14 days. I must stress that of course action will be taken from day one of an urgent notification by the chief inspector, but immediate energy should be focused on securing improvements rather than drafting a report. We consider that 28 days is an appropriate period, first to take action and then to present the steps that were taken through a report.

Finally, amendment 21 would require responses to inspection reports by the Secretary of State to set out actions that have been taken or that will be taken to address concerns. We consider that that is already covered by subsection 2(6), which requires the Secretary of State to provide a response to recommendations made by the inspectorate. It will be clear from such a response what actions are planned.

Having given these assurances that prisoners' rights will be central to inspections and that we will act immediately when significant concerns are highlighted, I ask the hon. Lady to withdraw the amendment.

Yasmin Qureshi (Bolton South East) (Lab): I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Yasmin Qureshi: I beg to move amendment 22, in clause 2, page 5, line 12, after "prison" insert "at any time".

This amendment enables the Inspectorate to enter prisons at any time.

The Chair: With this it will be convenient to discuss amendment 7, in clause 2, page 5, line 20, at end insert—

'(2A) The Chief Inspector may require any person to provide information on—

(a) the adequacy of staffing levels,

(b) the nature of education and literacy programmes, and

(c) the effectiveness of rehabilitation programmes and re-conviction rates."

This amendment ensures the Chief Inspector has the necessary powers to obtain information relating to staffing levels, education programmes, rehabilitation programmes and re-conviction rates.

Yasmin Qureshi: It is a pleasure to serve under your chairmanship, Mr Stringer.

I will speak to amendment 22 as well as speaking on behalf of the hon. Member for Dwyfor Meirionnydd, who tabled amendment 7. The amendments would enable the inspectorate to enter prisons at any time. At the moment there is no guarantee that it has access to an establishment at the time of its choosing. Clearly that is unacceptable, and it must change. Different duties are performed in prisons at various times of the day and night, and it is important that the inspectors be allowed in to observe the policies and procedures of the prison regime at all times. It is important for that to be codified in law.

Amendment 7 would ensure that the chief inspector had the necessary powers to obtain information about staffing levels, education programmes, rehabilitation programmes and reconviction rates. Again, that is important because those are crucial markers showing whether a prison fulfils its statutory purposes. They are rightly of concern to the inspectorate, which should be able to get the information.

Mr Gyimah: The Bill gives the inspectorate new powers to enter prisons and to request information so that they have the right tools to do their job. That brings it into line with other inspection bodies that already have such powers. Although the inspectorate currently enjoys good co-operation with prisons, the powers put it beyond doubt that it can request information to complete its inspections.

Amendment 22 is intended to make it clear that the chief inspector may enter a prison at any time. We agree that that is an important requirement for an independent inspectorate. We consider that access to be implicit in the clause, which reflects the fact that inspections can be conducted unannounced.

The purpose of amendment 7 is to make it explicit that the chief inspector can request information on specific areas such as staffing levels and literacy programmes. Paragraph 2 of new schedule A2 to the Prison Act 1952 requires any person who holds relevant information to provide it to the chief inspector. "Relevant information" is defined in paragraph 4 of new schedule A2 as information needed for the inspection that

"relates to the running of a prison, or to prisoners detained in a prison".

The definition is therefore sufficiently broad to capture the information described in amendment 7.

We agree that the inspectorate should be able to get the information and access that it needs. Given those assurances, I ask that the amendment be withdrawn.

Yasmin Qureshi: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Yasmin Qureshi: I beg to move amendment 23, in clause 2, page 7, line 29, at end insert—

"(8) Before this section comes into force the Secretary of State must prepare and publish a report describing progress made towards the implementation of recommendations of the Chair of the Parole Board concerning the treatment of prisoners serving sentences of imprisonment for public protection and detention for public protection and must lay a copy of the report before Parliament."

This amendment enables issues relating to IPPs to be debated within the long title.

The purpose of the amendment is to deal with the issue of prisoners who have effectively served their custodial sentence but who are still waiting to be released because they have been detained for public protection. It is important because there are currently thousands of people in that category still in the prison system. We ask that the matter be specifically addressed in the Bill.

The amendment would enable issues relating to sentences of imprisonment for public protection to be debated within the long title of the Bill. It would also allow the Government to outline the steps taken to implement the recommendation of the chair of the Parole Board, Nick Hardwick, on the treatment of people currently imprisoned and serving an IPP sentence. If the sentencing issue is not dealt with in the long title of the Bill, it will not be possible to address the injustice faced by thousands of people serving indeterminate sentences for public protection years beyond the expiry of their original tariff date.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 abolished the IPP sentence and introduced powers to change the release test for IPP prisoners. However, although the IPP sentence is no longer an option for the courts, the powers to change the release test have not been enacted, and Her Majesty's inspectorate of prisons has called on the Justice Secretary to take decisive action to reduce the number of people serving IPPs who have been held beyond the tariff.

Although the rate of release of IPP prisoners has increased in recent years, the effect of Parole Board delays, limited resources, poor procedures for amending risk and the lack of available places on offending behaviour programmes is that a large number of IPP prisoners continue to face significant obstacles to working towards their legitimate release. According to the Ministry of Justice, of the 3,683 people in prison currently serving an IPP sentence, 3,081 have passed their tariff expiry, and 603 remain in prison despite having been given an original tariff of less than two years. I must declare an interest: I have a client who has served his tariff and is still in prison because he is waiting for the IPP procedures to be carried out. That group would not have been able to receive an IPP sentence following the reforms to the legislation introduced in 2009. Instead, it is likely that they would have been given relatively short determinate sentences.

Statistics released by the Prison Reform Trust in June 2016 showed that IPP prisoners have one of the highest rates of self-harm in the prison system, and highlighted the impact of ongoing incarceration on the mental health and wellbeing of IPP prisoners. A thematic review of IPP prisoners published by Her Majesty's inspectorate of prisons in November 2016 found that the cost to the public purse of continuing to hold high numbers of IPP prisoners and the pressure that they exert on the system in terms of risk management activity and demand for offending behaviour programmes and parole processes are significant. It stated that

"resources are being stretched increasingly thinly."

It concluded that

"for many IPP prisoners, it is not clear that holding them well beyond their end-of-tariff date is in the interests of public protection and therefore there are issues of fairness and justice".

[Yasmin Qureshi]

Without a legislative change, the Parole Board has confirmed that it will not be possible to reduce the IPP prisoner population below 1,000. It will also be impossible to address the particular injustice faced by IPP prisoners with an original tariff of less than two years or tackle the growing problems of IPP recalls and the disproportionate licence period attached to the IPP sentence.

In my excitement, I might have slightly misled the Committee when I said that one of my clients is still waiting to come out. What I was trying to say is that, in my practice in the past, I have had clients who were detained under the IPP and whose sentence expired, but years later they were still in the system. One of the main problems was that many of those people had to attend a number of different types of courses before they were released, some of which were very expensive and quite lengthy, and the system—the prison, the probation service and the Parole Board—did not allow them to attend them in time to be ticked off as having done them. They therefore ended up spending more time in prison than they had been sentenced for. That is a very relevant issue. There are more than 6,000 people—that is a big figure—who really should be out but are not, and only because the Parole Board was slow in signing them up to those courses.

2.15 pm

Mr Gyimah: Having listened to the shadow Minister, I believe that amendment 23 is a probing amendment, so I will give assurances about the work we are doing on IPPs. In dealing with all IPPs, public protection is and will always be of paramount concern to us. I recognise, of course, the concerns about prisoners serving IPP sentences. We are taking considerable steps to address those concerns and continue to explore what further improvements could be made to the process.

The amendment would require the Secretary of State to prepare and lay before Parliament a report describing progress made on recommendations from the chair of the Parole Board concerning the treatment of prisoners serving IPP sentences. I do not believe that there is a need for such a report. We work very closely with the independent Parole Board and its partners on tackling the issues presented by IPP prisoners and will of course take account of any views or recommendations from its chair on further improvements that could be made. We do not believe that there should be a statutory requirement on the Secretary of State to report to Parliament in response to such recommendations.

The Government are already making significant efforts to address the issue of IPP prisoners. Our most up-to-date figures show that there were 512 first-time releases of IPP prisoners in 2015, the highest number of releases since the sentence became available in 2005. I fully expect that trend to continue. Figures on releases in 2016 will be published in April. I believe that these figures show that the efforts we are making to give IPP prisoners support, opportunities and motivation to reduce their risks and so progress through the system are bearing fruit. Those efforts, which are being taken forward by the Parole Board and, from April, the new HM Prison and Probation Service, are encapsulated in an IPP action plan. A new unit has been set up within the Ministry of Justice to improve progress in individual IPP cases. We are also working with the Parole Board to improve further the efficiency of the parole process for these prisoners.

Michael Tomlinson (Mid Dorset and North Poole) (Con): I am very grateful to the Minister for explaining what is happening. He may recall that I have raised a constituent's case with him. Will he continue to be alive to such cases, so that we can continue to bring those cases to him and he can continue to explain how the process will improve in the future?

Mr Gyimah: Yes, I am always open to representations on specific cases, although decisions are made by the independent Parole Board. Where there are challenges in the system that hon. Members become aware of, I am open to receiving representations and will look into them. Obviously, in order to speed up the process, the board has increased its capacity and is successfully tackling delays in the listing of cases. We are making sure that IPP prisoners have access to accredited offending behaviour programmes where appropriate and ensuring that such programmes can be delivered more flexibly, so that prisoners with particular complex needs, such as those with learning difficulties, can have greater access. I should mention, in particular, the progression regime at HMP Warren Hill, which has proved very successful, with 77% of IPPs who have had an oral hearing under the regime achieving release. The potential for additional places within the progression regime is currently being explored, with the aim of improving the geographical spread of places, including in the north of England.

All these measures are already having a significant beneficial impact on the IPP prison population and are facilitating the release of prisoners where the Parole Board is satisfied that their detention is no longer necessary for the protection of the public. These diverse measures, and the evidence that they are working, shown by the current highest-ever release rate, demonstrates that a report of the sort proposed by the hon. Member for Bolton South East is simply not necessary, and I therefore ask her to withdraw the amendment.

Yasmin Qureshi: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 2 ordered to stand part of the Bill.

Clause 3 ordered to stand part of the Bill.

Clause 4

THE PRISONS AND PROBATION OMBUDSMAN

Richard Arkless (Dumfries and Galloway) (SNP): I beg to move amendment 30, in clause 4, page 9, line 6, at end insert—

"(d) Investigating cases where a person is detained in immigration detention facilities for longer than 28 days.".

This amendment includes as a function of the Prisons and Probation Ombudsman to investigate where a person has been held in immigration detention for more than 28 days.

The Chair: With this it will be convenient to discuss the following:

Amendment 8, in clause 4, page 9, line 14, at end insert—

"(f) investigating—

(i) attempted suicides,

(ii) the number and nature of assaults on staff or prisoners, and

(iii) the adequacy of staffing levels to prevent such behaviour;

(g) investigating the content and effectiveness of rehabilitation programmes and liaison arrangements with the probation and other relevant agencies to ensure that such rehabilitation continues after a prisoner's release from custody.".

This amendment expands the remit of the Prisons and Probation Ombudsman in relation to the investigation of attempted suicides, assaults in prison and staffing levels as well as powers relating to the investigation of rehabilitation programmes and liaison arrangements.

Amendment 31, in clause 11, page 12, line 37, at end insert—

"(1A) The Secretary of State must request the Ombudsman carry out an investigation relating to detention of any person for over 28 days in immigration detention facilities including, but not restricted to, the effect on the individuals detained.".

This amendment ensures the Prisons and Probation Ombudsman investigates each case where a person has been held in immigration detention for more than 28 days.

Richard Arkless: I am sure it is not lost on hon. Members that it is almost exactly the hour that those awful events happened in Westminster last Wednesday. There are various memorials going on around us. I am sure all colleagues would back me in saying that we would much rather be at those memorials than here, but business goes on, life goes on, laws continue to be made and we have to continue to do our job.

The Bill applies only in part to Scotland; specifically, it applies primarily to immigration detention and its processes. Amendments 30 and 31 would ensure independent oversight of detention periods in immigration cases, and that detention happens with due regard to Home Office rules and the facts of the individual case. Amendment 30 would add to the ombudsman's powers the function of investigating where a person is held in detention for more than 28 days. Amendment 31 would compel the ombudsman to investigate such cases where detention exceeds 28 days.

The Government know this debate well. During the passage of the Immigration Act 2016, an amendment tabled by honourable colleagues went further than the amendment I have moved today. It would have limited detention for immigration cases outright to 28 days. The Government were defeated in the Lords and the amendment attracted cross-party support in the House of Commons, but was ultimately unsuccessful. I hope that closer consideration will be given to this amendment than was given to the last.

The all-party groups on refugees and on migration have concluded very clearly that there should be a 28-day limit. People held in immigration detention have committed no crime, yet their detention is open-ended, without limit, and could last for years. In no other sphere of our jurisdiction would we allow that to happen. It simply would not happen in the rest of the prison estate—no one would be held for more than 28 days without being placed before a judge—but it happens in our immigration system. The UK is the only EU country not to have a time limit on immigration detention. The current position is inhumane, ineffective and hugely expensive. Personally, I would say that indefinite detention without trial is an affront to the rule of law, which I hold so very dear, having studied law on both sides of our border.

Let us consider some statistics. Some 7% of detained immigrants were detained for longer than six months. Only 23% of those detained leaving Dungavel in Scotland were deported, so by inference 77% were deemed safe. In that circumstance, is it proportionate to not have a 28-day limit? It is in the interests of both sides of the Committee that following detention or following anybody coming to this country to settle and make their life, integration is of paramount importance. Having this draconian measure and not having safeguards to limit the amount of time that immigrants may be detained will not get them off on the best foot in terms of integrating them into our society. That is in no one's interests. I respectfully suggest that the Government act and impose a limit to the time that people can be detained in immigration centres.

Yasmin Qureshi: The Committee will be relieved to hear that I am not going to comment on amendments 30 and 31, as the hon. Gentleman has made an eloquent case for them, but I promised the hon. Member for Dwyfor Meirionnydd that I would speak to amendment 8 on her behalf.

Amendment 8 would give the ombudsman the functions of

"investigating…attempted suicides…the number and nature of assaults on staff or prisoners …the adequacy of staffing levels to prevent such behaviour…investigating the content and effectiveness of rehabilitation programmes and liaison arrangements with the probation and other relevant agencies to ensure that such rehabilitation continues after a prisoner's release from custody."

Those are perfectly proper things for the ombudsman to look at, so we ask the Government to consider accepting the amendment. We also support amendments 30 and 31.

Mr Gyimah: Before dealing with amendments 30, 8 and 31, I will speak about some of the broader policy objectives of clause 4. The prisons and probation ombudsman was established in 1994 as the prisons ombudsman, following Lord Woolf's public inquiry into the Strangeways prison riots. Over the years, its role and remit have expanded, but despite many calls for it to be put on a statutory footing that has yet to happen.

The ombudsman plays an essential role, not only by providing an independent avenue for complaints, which can be a source of great tension for prisoners, but by investigating deaths in custody, the numbers of which are worryingly high, as all hon. Members will be aware. There have been long-standing commitments from successive Governments to put the ombudsman into legislation, and statutory status has been widely supported by stakeholders, including the Joint Committee on Human Rights and the Harris review. I am pleased that we can finally establish the office in legislation.

I should say that the ombudsman is part of a much broader response to the record high levels of self-inflicted deaths and self-harm. We are redoubling our efforts to make prisons places of safety and reform for those at risk. The actions that we are taking include rolling out new training across the estate to support our staff in identifying the risks and triggers of suicide and self-harm and understanding what they can do to support prisoners at risk; putting in place specialist roles—regional safer

[Mr Gyimah]

custody leads—in every region to provide advice to prisons and to spread good practice on identifying and supporting prisoners at risk; and developing our partnerships with experts, including by providing extra funding for the Samaritans to provide targeted support to prison staff and to prisoners directly. All that is in the context of an extra 2,500 staff and the roll-out of new ways of working that I have already set out, which will enable individual prison officers to manage a caseload of about six prisoners each. That extra capability will enable staff to support at-risk prisoners more effectively and will enable prisons to run more predictable regimes, improving safety.

That is all happening without legislation; however, when a death occurs, it is right that it is investigated with the utmost seriousness. Having a statutory office will give the prisons and probation ombudsman more visible independence, permanency and stronger powers of investigation.

Amendments 8, 30 and 31 relate to the ombudsman's remit. Amendment 8 would widen the remit of the ombudsman to include investigating

"attempted suicides…assaults…staffing levels…and effectiveness of rehabilitation programmes".

There are already other routes of investigation or scrutiny for these matters. At present, there is no set category to capture data on attempted suicides because it is not possible to determine intent when someone resorts to self-harm. NOMS records all self-harm incidents in prison custody. A self-harm incident is defined as

"any act where a prisoner deliberately harms themselves, irrespective of the method, intent or severity of any injury".

Nearly 38,000 self-harm incidents were reported last year, so it would be neither practical nor desirable for the ombudsman to investigate them all; however, they are taken very seriously. There are existing systems for treating the prisoner and for providing support through assessment, care in custody and teamwork. Where appropriate, prisons investigate internally and take relevant action.

Investigating assaults is done through adjudications or by the police, so it should not be a function of the ombudsman. In the safety and order section of prison performance standards, we have included a measure of the rate of assaults on prison staff, which we will supplement with an additional measure of staff perception of safety within the prison. Governors will be held accountable for the results that they achieve in reducing assaults on staff; the inclusion of this measure is designed to drive positive change and improve staff safety. Requiring the ombudsman to investigate the effectiveness of post-release arrangements would be a significant departure from its current remit and would overlap with the work of the probation inspectorate.

Clause 11 enables the Secretary of State to request the ombudsman to investigate other matters that may be relevant to the ombudsman's remit. In the past, that has included the investigation of an attempted suicide and rioting at an immigration detention centre. The ombudsman therefore has flexibility to investigate wider matters, but that is intended for exceptional cases and not to duplicate other established routes for investigation. In conclusion, we do not believe that the amendment is necessary, as other provisions are already in place to cover the functions.

2.30 pm

Amendments 30 and 31 would impose a duty on the Secretary of State to request that the ombudsman investigates those instances where a person has been detained under immigration powers for more than 28 days. Such investigations would be completely outside the current administrative remit and proposed statutory remit of the ombudsman. Published Home Office statistics show that of the 28,661 people leaving detention in 2016, 35% had been in detention for 29 days or more. Using those statistics as an illustration, the amendments would require the ombudsman to investigate more than a third of all immigration detention cases, which would have a significant impact on the ombudsman's workload and core functions.

If the purpose behind the amendments is to introduce some form of independent review in those cases where detention extends beyond 28 days, I am pleased to say that they are unnecessary. The Home Office has already made provision for additional judicial oversight of immigration detention by way of an automatic referral to the first-tier tribunal for consideration of bail after four months in detention. That provision will be commenced in due course. In addition to duplicating arrangements on the oversight of immigration detention, the amendments would fundamentally change the role of the ombudsman and are not consistent with the ombudsman's purpose.

I hope Members agree that establishing the ombudsman in legislation is a hugely positive step that is long overdue. The ombudsman's remit is well established. The Bill gives the ombudsman a clear framework to conduct investigations. I hope that the hon. Gentleman will therefore withdraw the amendment.

Richard Arkless: I thank the Minister for those words. I will pick up on a couple of points and then make clear whether we will press the amendment to a vote. He mentioned that the amendments would compel the ombudsman to investigate 35% of more than 28,000 cases. My hope is that if there were a limit, there would not be as many cases to investigate, so I do not think he was making a fair point.

I appreciate what the Minister said about automatic referrals to the first-tier tribunal, but that only triggers after four months. Frankly, holding someone in detention for four months without placing them in front of a judge is just as much of an affront to the rule of law as it would be open-ended. I cannot agree that automatic referrals are a suitable mitigating measure, but we will not press the amendment to a vote this afternoon. We anticipate that it commands cross-party support, and we think there is a good chance we can make the Government see sense. We reserve the right to bring back the amendment in full force at a later stage of the Bill's passage. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 4 ordered to stand part of the Bill.

Schedule 1

THE PRISONS AND PROBATION OMBUDSMAN

Yasmin Qureshi: I beg to move amendment 24, page 68, line 5, in schedule 1, at end insert

", with the consent of the Justice Committee of the House of Commons."

This amendment requires the Prisons and Probation Ombudsman to be appointed with the consent of the Justice Select Committee.

Establishing the ombudsman's independence, similar to that of the chief inspector of prisons, is a priority for a range of stakeholders. The amendment would ensure that independence.

Mr Gyimah: Amendment 24 relates to the appointment of the ombudsman. We have already debated the appointment of the chief inspector, and as the arguments are similar I will keep my comments brief.

Like that of the chief inspector, the appointment of prisons and probation ombudsman is subject to the Cabinet Office's governance code for public appointments, which is regulated by the Commissioner for Public Appointments. It therefore follows an established transparent process for public appointments. We consider that the appointment of this critical role should rest with the Secretary of State, who is accountable to Parliament for prison and probation performance.

Like the appointment of the chief inspector, that of the prisons and probation ombudsman is subject to a pre-appointment hearing by the Justice Committee. The Justice Committee therefore already has a role in assessing its preferred candidate and providing its views to the Secretary of State. I hope Committee members agree that Parliament has an appropriate role in the public appointment process of the ombudsman, and I hope the hon. Member for Bolton South East is therefore content to withdraw the amendment.

Yasmin Qureshi: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 1 agreed to.

Clause 5

Investigations of deaths within the Ombudsman's remit

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 6 and 7 stand part.

Mr Gyimah: Clauses 5 and 6 set out which deaths fall within the ombudsman's remit for investigation. They should be read in conjunction with clause 20, which sets out which institutions are in scope. Clause 5 also requires the ombudsman to investigate any death of a person who at the time of their death was detained or resident in an institution within its remit. Clause 6 provides the ombudsman with a discretion to investigate deaths that occur when the person is no longer detained or resident in a relevant institution or immigration detention facility, or subject to immigration escort arrangements.

If the ombudsman is aware of the death of a person who has recently ceased to be detained in a place that is within his remit and has a reason to believe the person's death may be connected with their detention, clause 6 allows him to investigate the death. The ombudsman will determine the extent of the investigation required according to the circumstances of the death. For example, a death that is clearly the result of natural causes may require less investigation than an apparently self-inflicted death.

Clause 7 refers to the position of the Lord Advocate, who leads the system of criminal prosecutions and the investigation of deaths in Scotland. It states that the Lord Advocate's role as head of the system of investigation of deaths in Scotland is not affected by putting the ombudsman into legislation. That is relevant, because the ombudsman has a duty to investigate the deaths of those detained in immigration detention facilities or under immigration escort arrangements in Scotland. It is intended that the ombudsman will enter into a memorandum of understanding with the Lord Advocate to provide a clear framework for both officers to discharge their independent functions effectively.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clauses 6 and 7 ordered to stand part of the Bill.

Clause 8

Reports on deaths investigated by the Ombudsman

Yasmin Qureshi: I beg to move amendment 25, in clause 8, page 10, line 36, after "recommendations" insert "within 60 days".

This amendment requires a response from the Secretary of State within a set timeframe when a Prisons and Probation Ombudsman report on a death makes recommendations.

The Chair: With this it will be convenient to discuss the following:

Amendment 26, in clause 8, page 10, line 38, at end insert—

"(c) the response must set out the actions that the Secretary of State has taken, or proposes to take, in response to the recommendations described in the report."

This amendment requires the response from the Secretary of State to set out actions.

Amendment 27, in clause 10, page 12, line 16, after "recommendations" insert "within 60 days".

This amendment requires a response from the Secretary of State within a set timeframe when a Prisons and Probation Ombudsman report on a complaint makes recommendations.

Amendment 28, in clause 10, page 12, line 16, at end insert—

'(5A) The response in subsection (5) must set out the actions that the Secretary of State has taken, or proposes to take, in response to the recommendations described in the report."

This amendment is consequential on amendment 27. It requires the response from the Secretary of State to set out actions.

Yasmin Qureshi: Amendment 25 would require the Secretary of State to respond within a set timeframe—we think 60 days is reasonable—after a prisons and probation ombudsman report on a death makes recommendations. Amendment 26 is also designed to elicit a fast response from the Secretary of State. Just as with Her Majesty's inspectorate, the Secretary of State should be required to set out how he or she will respond to the recommendation of the ombudsman.

Amendment 27 is similar, requiring a response from the Secretary of State within a set timeframe when the prison and probation ombudsman reports on a complaint and makes a recommendation. We think that 60 days is a reasonable time for the Secretary of State to respond

[Yasmin Qureshi]

to that complaint. Amendment 28 is sequential to amendment 27 and requires a response from the Secretary of State to set out actions, because in reality there is no point in having a report if there is no response to set out actions that the Secretary of State will take. We believe that a response should be statutorily encompassed in the legislation and that it should be done within the relevant statutory framework.

Mr Gyimah: These amendments concern the Secretary of State's responses to the ombudsman's reports. Clauses 8 and 10 currently provide that a response must be provided within a period specified by the ombudsman. Currently, the ombudsman's terms of reference establish a 28-day time limit for responses to the ombudsman's recommendations to set out whether or not a recommendation has been accepted. In practice, the majority of the ombudsman's recommendations are accepted and responses provided to this effect. We consider it preferable to retain flexibility for the ombudsman to set the time limit for responding by not providing a statutory timeframe for responses.

Finally, amendments 26 and 28 would require that responses to ombudsman reports by the Secretary of State must set out actions that have been or will be taken to address concerns. We consider this already covered by clauses 8(5) and 10(5), which require that the Secretary of State must provide a response to recommendations made by the ombudsman. It will be clear from such a response what actions are planned. I hope that hon. Members will agree that provisions are already in place for the ombudsman to require a response within a timescale that he thinks appropriate and for the Secretary of State to respond on actions to be taken. I therefore suggest that the amendment be withdrawn.

Yasmin Qureshi: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 8 ordered to stand part of the Bill.

Clause 9

INVESTIGATION OF COMPLAINTS BY THE OMBUDSMAN

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 10 to 20 stand part.

Mr Gyimah: We have discussed the benefits of putting the ombudsman into legislation. I will briefly set out the remaining clauses that establish the ombudsman's statutory role. Clause 9 sets out the eligibility criteria for individuals who wish to lodge complaints with the ombudsman and the powers of the ombudsman in relation to complaints. It also provides a power for the Secretary of State to make regulations about the type of matters that fall within the ombudsman's complaint remit. This clause will give the ombudsman the discretion required in conducting these investigations and the power to act and enable the Secretary of State to reflect necessary changes in the ombudsman's remit without further primary legislation.

Clause 10 sets out the reporting requirements and powers following complaints investigated by the ombudsman. Importantly, the nature of reporting and publication will be determined by the ombudsman, so that he can maximise the effectiveness of the report in the light of the intended recipient. Clause 11 makes provision for the ombudsman to investigate matters that relate to the ombudsman's functions at the request of the Secretary of State. This is a valuable function that we wish to retain in practice. Examples of its use include an investigation of a major fire at Yarl's Wood in 2003 and a more recent suicide in prison.

2.45 pm

Clause 12 will give the ombudsman the power to enter premises under his remit in the course of an investigation or to carry out his functions. That is one of the most important measures in the Bill, giving the PPO the right tools, for the first time on a statutory basis, to carry out its functions.

Clause 13 will provide the ombudsman with powers to acquire access to information that is relevant to an investigation. The ombudsman currently enjoys good co-operation with institutions, but these powers will put beyond doubt, and in law, that the ombudsman can require individuals to provide information relevant to his investigations.

Clause 14 makes provision for the ombudsman to certify to the High Court—or, in Scotland, the Court of Session—that a person has unlawfully obstructed the ombudsman in the exercise of his powers of entry or powers to obtain information. Although we do not anticipate that they will be required often, the powers will help to deter non-co-operation.

Clause 15 makes provision for the ombudsman to notify the police, or appropriate law enforcement agency, if he believes that there should be a criminal investigation into any matter. That will enable law enforcement investigations to be actioned quickly, while the ombudsman will retain the ability to stop an investigation in the light of other investigations.

Clause 16, which we should consider alongside clause 17, sets out restrictions on the information that the ombudsman can disclose and makes provision for the ombudsman to share information that he obtains in the course of his investigations. The clause encourages close co-operation between the ombudsman and other relevant bodies, which has important practical application. For example, in carrying out an investigation of a death, the ombudsman can share information with a coroner, as necessary.

Clause 18 makes provision for the ombudsman to produce an annual report based on the ombudsman's work in the preceding year, and for the Secretary of State to lay the report before Parliament. That will enable Parliament to have oversight of the ombudsman's activity that year.

Clause 19 sets out the clauses in the Bill that are not applied to secure children's homes in Wales. As social services is a devolved matter and children's homes in Wales are regulated by Welsh legislation, we have agreed with the Welsh Government that the requirements will be provided through Welsh legislation rather than in the Bill.

Finally, clause 20 provides definitions that are relevant to the Bill clauses related to the ombudsman, including setting out the relevant institutions that are covered by the ombudsman's remit of investigating deaths and complaints and defining the person in charge of those institutions, which is relevant where the ombudsman must be notified of the deaths. I suggest that clauses 9 to 20 stand part of the Bill.

Yasmin Qureshi: I want to make a couple of observations. We welcome the provisions, which are absolutely right and needed in the 21st century. I specifically want to thank the Government for putting the ombudsman on a statutory basis and giving him to the power to investigate deaths in immigrations centres, as well as those agencies that escort prisoners from immigration centres to other places, so that they are also covered. If somebody tries to obstruct the ombudsman, he can go to the High Court and the person causing the obstruction can be done for contempt of court. Those are really welcome provisions that we wholeheartedly support.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clauses 10 to 20 ordered to stand part of the Bill.

Clause 21

Interference with wireless telegraphy in prisons etc

Yasmin Qureshi: I beg to move amendment 29, in clause 21, page 19, line 34, at end insert—

'(8) Before this section comes into force the Secretary of State shall—

(a) carry out a review of arrangements for prisoners to make telephone calls, the cost of such arrangements, the benefits of such arrangements, the level of charges to prisoners and options for providing an improved and more affordable service, and

(b) lay a report before Parliament containing the Secretary of State's conclusions as a result of the review."

This amendment requires a review of prison phone arrangements.

The reason for the amendment is that everybody accepts that when somebody is in prison they need to be able to communicate with their families. We recognise that mobile phones have also caused problems. In 2015, nearly 17,000 mobile phones and SIM cards were found in prisons in England and Wales. That was an increase from around 10,000 in 2014 and 7,500 in 2013. Since October 2015, data have been collated differently, so that direct comparisons cannot be made.

In 2016, there was a total of 8,813 reported incidents of mobile phone finds and 4,067 reported incidents of SIM card finds. Section 1 of the Prisons (Interference with Wireless Telegraphy) Act 2012 already allows the Secretary of State to authorise governors to interfere with wireless telegraphy to disrupt unlawful mobile phone use. Clause 21 would allow the Secretary of State to authorise PCPs—for example, telecoms and internet service providers—to interfere with wireless telegraphy in prisons.

The Serious Crime Act 2015 makes provision for prison staff or the police to apply to the courts for a telecommunications restriction order, to require a mobile phone network to stop the use of a phone remotely. Regulations under the Act came into force on 3 August 2016.

Fundamentally, the clause seeks to provide PCPs with greater independence to conduct interference. Limiting access to mobile phones is necessary. However, a central plank of rehabilitation is ensuring prisoners have sufficient controlled contact with the outside world. In discussion with former prisoner officers, we were told that a lack of access to telephones was a major cause of disturbances in prisons.

The Prison Reform Trust has stated that access to telephones is limited and relatively expensive, hindering rehabilitation. It has suggested establishing a mandatory minimum level of access to telephones. The health charity, Change Grow Live, said:

"We recognise that the use of mobile phones within the prison estate can have negative security implications, but we do believe this could be better managed by ensuring there is wider access to telephones within prisons, to enable prisoners to maintain contact with friends and families."

The Royal College of Psychiatrists states:

"The Joint Commissioning Panel guidance for forensic mental health services in the NHS…recommends that family support and maintenance and re-establishment of family relationships should occur where possible."

The Howard League states:

"Steps to increase access to legal methods of communication in prisons would have a much greater impact. Ensuring that prisoners can frequently access affordable payphones with a reasonable amount of privacy to make calls to their families would reduce the demand for mobile phones in prison."

The Public and Commercial Services Union states:

"It is worth noting that these reforms are long overdue and unions have been arguing for this issue to be addressed for many years."

We are asking for improved, controlled access to telephones, which will have the benefit of helping the prisoners and, we hope, lead to fewer mobile phones being found illegally in prisons.

Mr Gyimah: As hon. Members will know, technology—particularly mobile technology—is constantly evolving. The Government are determined that legislation should keep pace with developments to combat the serious problem posed by the use of illegal mobile phones in prison.

Illicit mobile phone use is linked to the supply of drugs and other contraband, serious organised crime and the evasion of public protection monitoring, bringing further harm to the victims of crime. The scale of the issue is stark. In 2016, nearly 20,000 mobile phones and SIM cards—that is 54 a day—were found in prisons in England and Wales.

Although this is not a new problem, the scale has increased steadily. In 2013, only about 7,000 mobile phones and SIM cards were found. To help combat that challenge, clause 21 and the associated schedule 2, will make a number of changes to the Prisons (Interference with Wireless Telegraphy) Act 2012. In its briefing on the Bill, the Prison Reform Trust stated:

"We welcome the introduction of sensible and proportionate measures to prevent the damaging and illicit trade in mobile phones in prisons."

The Government welcome the trust's support for measures to tackle the many serious problems caused by illicit mobiles in prison. They are used, as I have said, as a link to the supply of drugs and contraband and serious and organised crime. The trust noted that, as well as

[Mr Gyimah]

targeting the supply side, attention should also focus on limiting demand by improving the availability of, and prisoners' access to, lawful telephones in prison. Once again, we agree with the trust.

As part of our digital prison programme, we have made changes to make it easier for prisoners to use telephones in HMP Wayland. Secure telephone handsets are now available in cells. The deployment started in September 2016 and was completed in December 2016. This has been repeated at HMP Berwyn, and we are in the process of extending it across the estate as part of the programme. We are then able to reduce the phone tariff in these institutions to make calls more affordable and accessible, and the result has been excellent. Notably, call minutes used in Wayland are up 114% from our baseline week in September. Anecdotal evidence also indicates noticeable improvement in behaviour.

As a result of these encouraging developments, we are now looking at further ways to accelerate the improved accessibility and affordability of telephony across the whole estate. We are steadily building a body of evidence that shows the benefits which arise from a nudge that simultaneously discourages the illegal use of mobile phones, while encouraging legitimate calls to families, friends and supporters, by making handsets more accessible and affordable. We will continue to monitor the effectiveness of these measures over the coming months. We intend to retender the national telephony contract this calendar year to reduce call charges to prisoners, while introducing technologies that block and disrupt illicit mobile phones.

We have given detailed consideration to the need to assist prisoners in maintaining relationships with family members while they are in prison, as we develop policy on prisoner access to telephone services. I do not believe that it would be right to accept the amendment, because the work to be covered by the review is already under way and will continue.

Further, placing a requirement to conduct a review in primary legislation would delay commencement of provisions in the Bill designed to improve our ability to combat the use of illicit mobile phones in prisons until such time as a review is carried out. Our work to improve prisoner access to telephone services will continue, irrespective of a review. I hope therefore that the hon. Lady is persuaded to withdraw the amendment.

Yasmin Qureshi: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 21 ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 22

TESTING PRISONERS FOR PSYCHOACTIVE SUBSTANCES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 6—*Testing prisoners blood following assault*—

"Testing prisoners blood following assault

'(1) The Prison Act 1952 is amended as follows.

(2) After section 16B insert—

0 "Power to test prisoners blood

'(1) If an authorisation is in force for the prison, any prison officer may, at the prison, in accordance with prison rules, require any prisoner who is confined in the prison to provide a sample of blood for the purpose of investigating assaults including spitting and biting, carried out by the prisoner.

(2) If the authorisation so provides, the power conferred by subsection (1) above shall include power—

(a) to require a prisoner to provide a sample of urine, whether instead of or in addition to a sample of blood, and

(b) to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample, whether instead of or in addition to a sample of blood, a sample of urine or both.

(3) In this section—

"authorisation" means an authorisation by the governor;

"intimate sample" has the same meaning as in Part V of the Police and Criminal Evidence Act 1984;

"prison officer" includes a prisoner custody officer within the meaning of Part IV of the Criminal Justice Act 1991;

"prison rules" means rules under section 47 of this Act"

(4) A person commits an offence if that person fails to comply with requests to provide samples under subsection (2).

(5) A person guilty of an offence falling within subsection (4) shall be liable on summary conviction to—

(a) imprisonment for a period not exceeding 51 weeks,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.""

This new clause to the Prison Act 1952 gives prison officers the power to require a blood sample where the prisoner is accused of certain assaults.

Holly Lynch (Halifax) (Lab): It is a pleasure to serve under your chairmanship this afternoon, Mr Stringer, and I take this opportunity to put on record my thanks to the outstanding Library and Clerks, who have been incredibly helpful in assisting me in preparing the new clause. I support new clause 6. In the event that a prisoner spits at or bites a prison officer, the new clause would give the prison governor the power to request a blood sample from that prisoner. Refusal to provide a sample would become an offence in and of itself.

The new clause follows similar work that I have been doing with police officers and other emergency service workers, where spitting and biting have been on the rise as a means of assault. Not only is it a horrible act, but spitting blood and saliva at another human being can pose a very real risk of transmitting a range of infectious diseases, some with life-changing or even lethal consequences. Arina Koltsova, a law enforcement officer in the Ukraine, died just last year after contracting tuberculosis from an offender who spat at her while she was trying to arrest him. I have sought practical and proportionate ways to improve the situation for those who face such risks as part of their job.

3 pm

Over the past 15 years there has been a steady but dramatic increase in the number of reported incidents of prison officers being spat at or bitten. In 2000, there were 35 recorded incidents of spitting. By 2015 this number had increased to 394. Over the same period biting went up from 89 incidents to 291. I want to share the stories of two police officers who were spat at: while I appreciate that the Bill deals exclusively with prison

officers, I am trying to convey to the Committee the very human impact on our public servants, as well as their families. This is the same regardless of which public service is being provided.

PCs Mike Bruce and Alan O'Shea of West Midlands police both had blood and saliva spat in their faces while trying to arrest a violent offender. They both had to undergo antiviral treatments to reduce the risk of contracting communicable diseases, and they faced a six-month wait to find out whether the treatment had been successful. During that time, PC O'Shea was advised that he could not see his brother, who was undergoing cancer treatment, because the risk of passing on an infection was too high. He was also advised not to see his parents, as they were inevitably in regular contact with his brother. PC Bruce had a false positive result for hepatitis B, and for six months until conclusive test results came through, he was understandably reluctant to be close to his wife or young children, fearing for their wellbeing. His wife and children also had to be tested because of his false positive result.

While PCs Bruce and O'Shea are police officers, their harrowing experiences will be similar to those of prison officers up and down the country who are currently undergoing antiviral treatments, because, as it stands, they are powerless to seek clarity about the health of the prisoner at the time of the incident. At the moment, if a prison officer is spat at, they can take a blood sample from an individual only if that prisoner gives permission. Needless to say, the prisoner often deliberately seeks to prolong the distress and anxiety exerted on the officer for as long as possible by refusing to grant permission or provide a blood sample. This new clause would deny them the ability to torment a prison officer in this way and would restore the balance of power.

Let us bear in mind that any prisoner can spit. They do not need to go to the trouble of acquiring or fashioning an offensive weapon in order to inflict life-changing consequences on another person; they can simply use their own bodily fluids. Regardless of whether the spitter has a communicable disease or not, the inability to determine that at the time of the incident is leaving prison officers with no choice other than to undergo antiviral treatments and face an agonising six-month wait. I have checked with the Prison Officers Association, which confirms that a prison officer would be expected to be at work during that six-month wait and could be asked to return to their duties on the same wing as the individual who has spat at or bitten them. We could put a stop to that with this new clause and restore the appropriate balance of power, dignity and peace of mind to prison officers. Measures such as this are already being used in Australia to protect public sector workers, and it is worth mentioning at this point that this new clause is intended to complement new clause 5, which would create a stand-alone offence of assaulting a prison officer. We will have chance to debate the merits of that later in Committee.

I heard the words of the Minister this morning and I am satisfied that he accepts that retention of prison officers is a problem. However, while the Bill goes a long way towards giving governors more responsibility and increases the scrutiny upon them, I do not believe that it goes far enough in addressing the pressures that governors face in prisons. There is a real danger that the Bill will shift responsibility away from the Government and on to the governor, without giving them the resources to bring about the improvements that they want to deliver. This clause would be a cost-effective way of making prison officers that much safer, and I believe that that focus is missing from the Bill. It is intended to serve as a deterrent and would have a positive impact on safety, and therefore on the retention of prison officers and staff. I hope that Members will support this new clause.

Yasmin Qureshi: The Opposition support my hon. Friend's new clause. It is important that prison officers should be able to work in a safe environment and have the right to know if they are being exposed to any infectious diseases.

Before I sit down for the last time today, I want to make a brief observation about clause 22 and the proposal to simplify the legislation so that testing can be done for all drugs. Testing alone is not an adequate response to the problem of drugs and psychoactive substances in prisons. Although it is important, it can only be of limited value because not all prisoners can be tested regularly; far greater resources would have to be provided.

The Prison Reform Trust has said that testing can be partial, but must be intelligence-led. The Howard League states that,

"drug testing alone does little to reduce drug use in prisons. Recent HMIP reports have found that overcrowding and a shortage of officers mean that intelligence-led drug tests often do not take place."

Testing must therefore be intelligence-led. Again, that requires greater resources than are available at present.

Mr Gyimah: I want to pay tribute to the incredible work that our prison officers and support staff do every day. They work in an incredibly challenging environment and do a very brave job indeed. The new clause highlights some of the more challenging circumstances that they face when an offender spits or bites a prison officer. I also want to put on the record now that I recognise the additional worry and stress that prison officers can face waiting, as the hon. Member for Halifax has mentioned, often for several months to discover whether, in addition to the assault they have suffered, they have contracted a transferable medical condition. I therefore welcome the debate that that raises. I know that the hon. Lady has raised this issue before in relation to assaults on emergency workers. The only concern, and why we will resist the new clause, is that, as currently drafted, I can see some legal and practical difficulties, which I will outline.

A detailed regime applicable to securing samples from prisoners already exists under the powers set out in a Prison Service instruction in the Prison Act 1952. The powers enable testing for illegal activity and testing for drugs either by randomised samples or where there is a suspicion of drug use. Section 16B of that Act provides a power to test for alcohol. Changes in clause 22 of the Bill extend testing powers to psychoactive substances. Testing can be voluntary or mandatory and is normally conducted by urine testing and other non-invasive testing methods.

It is not clear to me, however, where the main focus of the power in the new clause lies. Is it for the detection of crime—proving the assault—or is it to provide information quickly to the prison officer involved about the risk of a communicable disease? A testing power without specific safeguards does not serve to understand what the purpose of a test is.

[Mr Gyimah]

Also, significant practical issues have to be considered. Under PACE, other than urine tests, all intimate samples, including blood samples, can be taken only by a registered medical practitioner or registered healthcare professional. A blood sample cannot be taken by a police officer under the PACE regime in a similar situation. Prison officers are simply not trained to take blood samples. They are not medical professionals, and the sterile medical conditions required are not always available in prisons.

I would also be concerned to avoid situations in which prison officers, owing to a lack of medical training and the absence of a provision requiring prisoner consent in taking blood samples, found themselves accused of assault.

We need to consider what impact the use of the power would have on the relationship between prisoners and prison officers, which is crucial to successful offender management. The safeguards on consent, testing processes and data protection are needed for practical and legal reasons. Without sufficiently circumscribed criteria giving rise to the power to take samples; without suitably qualified staff to take the samples; and without proper training of staff and fair and proportionate penalties for non-compliance, the power is unlikely to be compatible with article 8 rights, and the Government cannot support it.

Having said that, I want to make some additional points about what can be done now. As we set out in our "Prison Safety and Reform" White Paper, we are committed to improving the safety of prisons for all who live and work there. We do not tolerate any behaviour against staff that undermines their essential work. Staff must have the confidence that assaults against them will be met with a robust and swift response.

To that end, we are taking an evidence-led approach to improving prison safety. I have already mentioned the 2,500 staff in the new key worker regime that we are rolling out. I believe that increased numbers will also enable more staff to be available on wings, to increase staff confidence in the support that they have available from colleagues, and that they will also act as a deterrent to assaults by prisoners on staff.

Additional staff will also mean more predictable regimes, reducing prisoner frustrations and providing opportunities for purposeful engagement. We already have a well established process for sanctioning violence in prisons. A range of sanctions is available, from downgrading privileges, segregation and adjudications. Cases that are serious enough are heard by an independent adjudicator, who has the power to add up to another 42 days to a prisoner's sentence.

Governors are also required by the published adjudications policy to refer more serious assaults to the police for investigation. It is worth stressing that an assault that involves biting may be charged as a more serious offence of assault occasioning actual bodily harm, rather than the lower level common assault, depending on the nature of the injuries sustained. Spitting and biting can also be considered as aggravating factors within the offence, meriting a more severe sentence. Any sentence imposed should also, in accordance with sentencing guidelines, be served consecutively to the existing sentence.

Finally, there are also some technical issues relating to the penalties for failing to comply with a test. I do not want to labour the points, but I think that the hon. Member for Halifax has raised some important matters in the debate and, as I said at the outset, I completely understand the thinking behind the new clause. I sympathise with the intention, but given the legal and practical difficulties in the drafting, we cannot support it at this point. I therefore urge the hon. Lady to withdraw the new clause.

The Chair: Order. When we have exhausted the debate, we shall vote on clause 22. The vote on new clause 6, if there is one, will happen later in the proceedings.

Holly Lynch: I thought that the Minister's response was constructive, and I am grateful. I want to respond to some of the issues he raised; I hear his concern. The new clause is about an extension of the powers to test, which currently have a focus on drugs, and on identifying them in a prisoner's system; however, there is a key gap with respect to identifying whether someone has a communicable disease.

As to the intention, I appreciate that the evidence in question could contribute to a case brought against a prisoner for biting or spitting at a prison officer; however, it is about establishing in a timely way whether a prison officer would need to embark on anti-viral treatment. That is our key focus. I entirely agree that prison officers would not be qualified to take blood samples from a prisoner and should not do it; what was done would need to involve NHS-qualified staff.

I understand the Minister's points about shortcomings in the drafting of the new clause, but I am not entirely satisfied that the measures that he has outlined deal with the issue comprehensively enough; we shall therefore reflect on that before there is an opportunity to vote later in the proceedings.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Guy Opperman.)*

3.15 pm

Adjourned till Tuesday 18 April at half-past Four o'clock.

Written evidence reported to the House

PCB 06 Royal College of Speech and Language Therapists

PCB 07 Catholic Bishops' Conference

PCB 08 John Wadham, Chair of the UK National Preventive Mechanism

PCB 09 Public and Commercial Services union (PCS)

PCB 10 Supporting All Falsely Accused with Reference Information (SAFARI)

PCB 11 Prison Reform Trust

PCB 12 The Howard League for Penal Reform